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Approved: 11/99 (DPP)  
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Modified:

CFDA Number: CFDA #20.205  
CFDA Title: Highway Planning and Construction  
Award name/number: BRO/STP/CMAQ- (proj. no.)  
Award Year: (year monies funded)  
Federal Agency: Federal Highway Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
RESURFACING AND/OR MAINTAINING LOCAL ACCESS  
TO CORPS OF ENGINEERS RESERVOIRS AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and [if city, use: the City of \_\_\_\_\_, a municipal corporation in the State of Missouri (hereinafter, "City")] or [if a county, use: the County of \_\_\_\_\_ (hereinafter, "County")].

WITNESSETH:

WHEREAS, the Congress of the United States has authorized, in Section 1214(l) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, the Secretary of Transportation to grant funds to Missouri for the resurfacing and maintenance of City and County roads that provide access to Corps of Engineers reservoirs in the state; and

WHEREAS, the (County/City) desires to resurface and/or maintain a certain road, more specifically described below, under the Access to Corps of Engineers Reservoirs Program.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

(1) PURPOSE: The improvement contemplated by this Agreement, and designated as Project COE-\_\_\_\_\_ by the Commission is on County Road \_\_\_\_\_ in \_\_\_\_\_ County. The length of this improvement is \_\_\_\_\_ mile(s).

(2) IMPROVEMENT: The (County/City) desires to resurface and/or maintain a certain road, more specifically described in (3), below, under the Access to Corps of Engineers Reservoirs Program. Said improvement is to be designed and constructed in compliance with the criteria outlined in the Commission's Local Public Agency Manual. Also the improvement must qualify for a Categorical Exclusion (CE) environmental classification or it will not be eligible for Access to Corps of Engineers Reservoirs

Program funds.

(3) LOCATION: The general location of the improvement is shown on the attachment labeled "Exhibit A" and the attachments incorporated by reference. The location is as follows:

(Complete location)

(4) INDEMNIFICATION: To the extent allowed by law, the (County/City) shall be responsible for injury or damages as a result of any services and/or goods rendered under the terms and conditions of this Agreement. In addition to the liability imposed upon the (County/City) on the account of personal injury, bodily injury, including death, or property damage, suffered as a result of the (County's/City's) performance under this Agreement, the (County/City) assumes the obligation to save harmless the Commission, including its agents, employees and assigns, and to indemnify the Commission, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission, including legal fees. The (County/City) also agrees to hold harmless the Commission, including its agents, employees and assigns, from any wrongful or negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the (County/City) for any purpose under this Agreement, and to indemnify the Commission, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission.

(5) MAINTENANCE: Upon completion of this improvement, the (County/City) shall accept control and maintenance of the improved road as a part of its road system and at its own cost and expense. Once this improvement is completed, all obligations of the Commission under this Agreement shall terminate.

(6) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the (County/City), and the (County/City) may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United States Department of Transportation Form FHWA 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement. Wherever the term "the contractor" or words of similar import appear in these sections, the term ("the County"/"the City") is to be substituted. The (County/City) agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(7) TRAFFIC CONTROL: The plans shall provide for handling traffic with signs, signals, and markings in accordance with the Manual on Uniform Traffic Control Devices (MUTCD). If this project is being done by (County/City) forces, then they can

follow their normal procedure for handling traffic on regular (County/City) projects.

(8) ACQUISITION OF RIGHT OF WAY: [Choose the option which applies to this project.]

Option (A): [No acquisition of additional right of way is anticipated in connection with Project \_\_\_\_\_ or contemplated by this Agreement.]

Option (B): [With respect to the acquisition of right of way necessary for the completion of the project, (County/City) shall acquire any additional necessary right of way required for this project and in doing so agrees that it will comply with all applicable federal laws, rules and regulations, including 42 U.S.C. §4601-§4655, the Uniform Relocation Assistance and Real Property Acquisition Act, as amended and any regulations promulgated in connection with that Act.

(9) PERMITS: The (County/City) shall secure approval or permits from the Federal Government and the State of Missouri as required to permit the construction and maintenance of the improvements contemplated by this Agreement.

(10) DISADVANTAGED BUSINESS ENTERPRISES (DBE): It is the policy of the U.S. Department of Transportation and the Commission that businesses owned by socially and economically disadvantaged individuals (DBE's), as defined in 49 C.F.R. Part 23, have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Thus, the requirements of 49 C.F.R. Part 23 and Section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21) apply to this Agreement.

(11) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the (County/City) agrees as follows:

(A) Civil Rights Statutes: The (County/City) shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq.*), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, *et seq.*). In addition, if the (County/City) is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Executive Order: The (County/City) shall comply with all the provisions of Executive Order No. 94-03, issued by the Honorable Mel Carnahan, Governor of Missouri, on the fourteenth (14th) day of January 1994, which executive order is incorporated herein by reference and is made a part of this Agreement. This Executive Order which promulgates a Code of Fair Practices in regard to nondiscrimination, is incorporated herein by reference and made a part of this Agreement. This Executive Order prohibits discriminatory practices by the state, the

(County/City) or its subcontractors based on race, color, religion, national origin, sex, age, disability or veteran status.

(C) Administrative Rules: The (County/City) shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(D) Nondiscrimination: The (County/City) shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The (County/City) shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(E) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the (County/City). These apply to all solicitations either by competitive bidding or negotiation made by the (County/City) for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the (County/City) of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(F) Information and Reports: The (County/City) shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the (County/City) is in the exclusive possession of another who fails or refuses to furnish this information, the (County/City) shall so certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(G) Sanctions for Noncompliance: In the event the (County/City) fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the (County/City) complies; and/or
2. Cancellation, termination or suspension of this Agreement, in

whole or in part, or both.

(H) Incorporation of Provisions: The (County/City) shall include the provisions of paragraph (10) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States Department of Transportation. The (County/City) will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the (County/City) becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the (County/City) may request the United States to enter into such litigation to protect the interests of the United States.

(12) ACCESS TO RECORDS: The (County/City) and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the FHWA and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for three (3) years from the date of final payment made under this Agreement.

(13) INSPECTION OF PERFORMANCE: The (County/City) shall insure that representatives of the Commission, the FHWA, and the Corps of Engineers shall have access to the project for the purpose of inspecting and reviewing work performed in connection with this Agreement.

(14) PROGRESS PAYMENTS: (County/City) may request that progress payments be made during the construction of the herein improvements. (County/City) shall submit to the Commission any invoice for progress payments no less than on a monthly basis. (County/City) shall repay any progress payments which involve ineligible costs.

(15) REIMBURSEMENT: With regard to work under this Agreement, the (County/City) agrees as follows:

The federal funds for improving access to Corps of Engineers Reservoirs shall be available for reimbursement of eligible costs which have been incurred by the (County/City). Any costs incurred by the (County/City) prior to authorization from FHWA and notification to proceed from the Commission are not reimbursable costs. The ratio for federal reimbursement of eligible costs for these improvements is not more than eighty percent (80%). Any costs for these improvements which exceed any federal reimbursement are not eligible for federal reimbursement and shall be the sole responsibility of the (County/City). The Commission shall not be responsible for any costs associated with these improvements unless specifically identified in this Agreement or subsequent written amendments. [OPTIONAL: The Commission shall

not provide more than \_\_\_\_\_ dollars (\$ \_\_\_\_\_) for this resurfacing and/or maintenance project.] Any costs incurred by the City prior to authorization from FHWA and notification to proceed from the Commission are not reimbursable costs.

(16) FINAL AUDIT: The Commission may perform a final audit of project costs. The United States Government shall reimburse the (County/City), through the Commission, any monies due. The (County/City) shall refund any overpayments as determined by the final audit.

(17) OMB AUDIT: If the \_\_\_\_\_ expend(s) five hundred thousand dollars (\$500,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with OMB Circular A-133. A copy of the audit report shall be submitted to Missouri Department of Transportation (MoDOT) within thirty (30) days of the issuance of the report. Subject to the requirements of OMB Circular A-133, if the \_\_\_\_\_ expend(s) less than five hundred thousand dollars (\$500,000) a year, the \_\_\_\_\_ may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(18) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the (County/City) and the Commission.

(19) COMMISSION REPRESENTATIVE: The Commission's chief engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(20) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(21) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The (County/City) shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(22) SECTION HEADINGS: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the (County/City) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Executed by the Commission this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

\_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary to the Commission

By \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Commission Counsel

By \_\_\_\_\_

Title \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_

Title: \_\_\_\_\_

**[If needed to authorize a city official**

**to execute the agreement.]**

Ordinance No. \_\_\_\_\_

**[If Agreement is with a county, the presiding commissioner and at least one other Commissioner must sign the agreement; preferably, all three Commissioners will sign the Agreement]**

\*If contracting is not a county with a county commission form of government, the two additional lines for the signatures of the full county commission can be removed.

*J:\contract\tp\tp7*